



CONSTITUTION

of the Urban Development Institute
of Australia Western Australian
Division Incorporated

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1. GENERAL

1.1 NAME

The name of the Association is the URBAN DEVELOPMENT INSTITUTE OF AUSTRALIA WESTERN AUSTRALIAN DIVISION.

1.2 DEFINITIONS AND INTERPRETATIONS

In this Constitution, unless the contrary intention appears, the meanings of the terms used in this Constitution are set out below.

Term	Meaning
Act	the <i>Associations Incorporation Act 2015</i> (WA).
Associate Member	an Associate Member described in rule 2.2(c).
Builder Member	A Builder Member described in rule 2.2(b).
Business Day	A day on which banks are open for business in Perth other than a Saturday, Sunday or public holiday in Perth.
Bylaws	The bylaws of the Association made under this Constitution
Chairperson	the person presiding at a General Meeting or Council meeting (as the case may be) in accordance with rule 5.6.
Chief Executive Officer	the Chief Executive Officer of the Association referred to in rule 4.4.
Code of Conduct	the Code of Conduct adopted by Council and as varied from time to time.
Council	the board of management of the Association referred to in rule 3.2.
Councillor	a member of the Council.
Developer Member	a Developer Member described in rule 2.2(a).
Executive	the President, each Vice President, Treasurer and Chief Executive Officer.
Financial Member	a Member whose membership fees are paid for the current year.
Financial Year	a period of 12 months commencing on 1 July each year and ending on 30 June the following year.
General Meeting	means a meeting convened under rule 5.
Government Member	a Member described in rule 2.2(e).

Life Member	a Member described in rule 2.2(d).
Meeting attendance	includes physical or electronic/virtual participation.
Member	a member of the Association within any of the membership categories referred to in rule 2.2 and Membership has a corresponding meaning.
Member's Representative	an individual appointed in accordance with rule 2.7.
National Body	The Urban Development Institute of Australia incorporated under the <i>Associations Incorporation Act 1991</i> (ACT).
Non-Financial Member	a Member to which rule 2.11 applies.
Ordinary resolution	a resolution other than a Special Resolution.
President	the Councillor referred to in rule 3.2 who is elected as President.
Register	the register of Members required by section 27 of the Act.
Special resolution	has the meaning given by Section 24 of the Act.
Treasurer	the Councillor referred to in rule 3.2 who is elected as Treasurer.
Vice-President	each Councillor referred to in rule 3.2 who is elected as Vice President.

1.3 INTERPRETATIONS

In this constitution headings and words in bold are inserted for convenience and do not affect the interpretation of this agreement and unless the contrary intention appears:

- (a) a reference to this Constitution or another instrument includes any variation or replacement of any of them;
- (b) a reference to a rule or the rules is a reference to a particular rule or the rules set out in this Constitution;
- (c) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (d) the singular includes the plural and vice versa;
- (e) the word 'person' includes a firm, a body corporate, an unincorporated association or an authority;
- (f) a reference to a person includes a reference to the person's executors, administrators, successors, substitutes (including persons taking by novation) and assigns;
- (g) if a period of time is specified and dates from a given day or the day of an act or event, it is to be calculated exclusive of that day;

- (h) a reference to a day is to be interpreted as the period of time commencing at midnight and ending 24 hours later;
- (i) if an act prescribed under this agreement to be done by a person on or by a given day is done after 5.00pm on that day, it is taken to be done on the next day;
- (j) if an event must occur on a stipulated day which is not a Business Day then the stipulated day will be taken to be the next Business Day;
- (k) unless otherwise provided, a reference to time is a reference to local time in Perth;
- (l) a reference to any thing (including any amount) is a reference to the whole and each part of it and a reference to a group of persons is a reference to any one or more of them; and
- (m) a reference to a body, other than the Association, (including an institute, association or authority), whether statutory or not:
 - (1) which ceases to exist; or
 - (2) whose powers or functions are transferred to another body, is a reference to the body which replaces it or which substantially succeeds to its powers or function

1.4 INCLUSIVE EXPRESSIONS

Specifying anything in this Constitution after the words 'including', 'includes' or 'for example' or similar expressions does not limit what else is included unless there is express wording to the contrary.

1.5 PURPOSE AND OBJECTS

The purpose and objects for which the Association is established are to:

- (a) promote the advancement and continuous improvement of the urban development industry having regard to the public interest in having a well-informed and educated urban development industry;
- (b) inform and educate Members in respect of regulatory and compliance matters for the purpose of serving the public interest;
- (c) represent the common views of Members in all matters of mutual and joint interest;
- (d) develop professional standards for the urban development industry conforming to the requirements of good town planning, economic soundness, high ethics, sustainable development and public interest;
- (e) secure mutual support, co-operation and fellowship within the urban development industry for the benefit of the industry, its participants and the public;
- (f) promote intellectual and social fellowship between Members of the Association;
- (g) present submissions and points of view on all matters of interest (whether for all or some Members of the Association) to service utilities, public authorities and government in general whether Federal, State, regional or local;

- (h) educate and conduct public education programmes, seminars, conferences and workshops for the benefit of the public and Members of the Association and others in relation to the urban development industry and to carry out research in relation to urban development;
- (i) promote a positive understanding in the community and across government about the value of urban development, which recognises the role of Members in the creation of strong and sustainable communities;
- (j) issue such publications as may be necessary to disseminate information of value to Members, the public and governments;
- (k) build and foster a relationship of trust and respect between the public and the Association's Members;
- (l) foster good relations between Members of the Association, other agencies and members of the general public and improve standing of Members in the community;
- (m) to test and settle or to assist Members in testing and settling any question, legal or otherwise, which in the opinion of the Council is one of general interest to Members; and
- (n) co-operate with branches of the Urban Development Institute of Australia established in other States of Australia and the National Body while at all times representing the interests of Members of the Association.

1.6 POWERS

The powers of the Association are to be used solely for carrying out the purpose and objects referred to in rule 1.5 and not otherwise and the Association specifically has power to:

- (a) provide and maintain any rooms, offices and buildings for the use of the Association and its Members;
- (b) employ staff and contractors as required to conduct the affairs of the Association;
- (c) provide for the internal management of the Association including the establishment of Regional Chapters;
- (d) conduct such business that meets the purpose and objects of the organisation and benefits Members;
- (e) charge fees appropriate to the services provided including membership fees, event registration fees and fees for business services;
- (f) acquire and hold shares, debentures or other securities of any corporation;
- (g) purchase, lease or exchange, hire or otherwise acquire any property and any rights and privileges which the Association may consider necessary or convenient for the purposes of its business and in particular any land, buildings, machinery, plant, choses in action and stock in trade;
- (h) invest and deal with the money of the Association not immediately required in such manner as may from time to time be thought to fit;

- (i) lend and advance money or give credit to any person or company or guarantee the payment of money or the performance of contracts or obligations by any person or company or otherwise assist any person or company;
- (j) borrow or raise or secure the payment of money in such manner as the Association considers fit and secure the same or the repayment or performance of any debt, liability, contract, guarantee or other engagement incurred or to be entered into by the Association and in particular by the issue of debentures perpetual or otherwise charged upon all or any of the Association's property (both present and future) and to purchase, redeem or pay off any such securities;
- (k) draw, make, accept, endorse, discount, execute and issue promissory notes, bills of exchange, bill of lading and other negotiable or transferable instruments;
- (l) sell, improve, manage, develop, exchange, lease, dispose of, turn to account or otherwise deal with all or any part of the property and rights of the Association;
- (m) enter into contracts for the provision of goods or services;
- (n) form affiliations with other organisations where there is common purpose on issues of advantage to the Association;
- (o) effect insurance including, without limitation, in respect of the assets of the Association and liability of its President, Councillors, Chief Executive Officer, auditor and employees (to the extent permitted by law); and
- (p) do all such other things which are incidental or conducive to the attainment of the purpose and objects and exercise of the powers of the Association.

1.7 GENERAL OBJECTS AND POWERS

Each purpose, object and power specified above is to be regarded as independent and is not limited to or restricted by reference to or inference from the terms of any other purpose, object or power but may be carried out in the widest sense and the purpose, object or power specified is not deemed subsidiary or ancillary to any other purpose, object or power.

1.8 APPLICATION OF INCOME AND ASSETS

- (a) Subject to the Rules herein the income and assets of the Association must be applied solely to the achievement of the purpose and objects of the Association as set out in this Constitution and no part may be paid or transferred directly or indirectly by way of dividend, bonus or otherwise by way of profit to any Member, except in good faith in the promotion of those objects or purposes.
- (b) A payment may be made to a Member out of the funds of the Association only if it is authorised under subrule (c).
- (c) A payment to a Member out of the funds of the Association is authorised if it is:
 - (1) the payment in good faith to the Member as reasonable remuneration for any services provided to the Association, or for goods supplied to the Association, in the ordinary course of business; or

- (2) the payment of interest, on money borrowed by the Association from the Member, at a rate not greater than the cash rate published from time to time by the Reserve Bank of Australia; or
- (3) the payment of reasonable rent to the Member for premises leased by the Member to the Association; or
- (4) the reimbursement of reasonable expenses properly incurred by the Member on behalf of the Association.

2. MEMBERSHIP

2.1 MEMBERSHIP

Membership of the Association consists of such individuals, corporations or firms as are admitted to membership by the Council of the Association.

2.2 QUALIFICATIONS FOR MEMBERSHIP

An individual, corporation, firm, local government or institution which supports the objects or purposes of the Association is eligible to apply for membership to the Association if the applicant falls within at least one of the following categories:

- (a) **Developer Member:** a person whose substantial business is land or urban development either in its own right or as part of a joint venture or other arrangement.
- (b) **Builder Member:** a person whose substantial business is the construction of residential dwellings and/or apartment buildings in its own right or as part of a joint venture or other arrangement.
- (c) **Associate Member:** a person not engaged in development in its own right but who, as part of its business, provides services to developers or project managers of land or urban developments from time to time, including but not limited to persons who act as a real estate agent, engineer, solicitor, surveyor, architect, town planner, contractor, supplier, financial institution or otherwise as consultants, service or product providers servicing the development industry.
- (d) **Life Member:** a person recognised by the Council for exemplary services to the Association or for another sufficient reason. It is the policy of the Association that it will recognise service rendered to it by Members and other persons as desirable and in accordance with this Constitution and any Bylaws.
- (e) **Government Member:**
 - (1) a local government within the meaning of the Local Government Act 1995 (WA);
 - (2) a governmental or statutory authority whose powers and functions substantially relate to land development, including a public authority whose power and functions relate substantially to the redevelopment of an area.
- (f) **Educational/NFP Member:** institutions providing tertiary education and not-for-profit institutions whose activities relate to the land and urban development industry.

- (g) **Indigenous Corporation Member:** a corporation registered under the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (Cth).
- (h) **Student Member:** a person enrolled full-time in a tertiary education course relevant to the land and urban development industry.

2.3 APPLYING FOR MEMBERSHIP

- (a) An individual, corporation, firm, local government or institution wanting to become a Member must apply in writing to the Association. The application must:
 - (1) if the applicant is not a natural person, nominate a natural person as its Member's Representative;
 - (2) be signed by the applicant or an authorised representative of the applicant and the nominated Member's Representative (if applicable);
 - (3) specify the membership category under rule 2.2 to which the application relates; and
 - (4) specify any subsidiaries of the applicant which the applicant wishes to have access to the benefits of membership.
- (b) The Council must consider each application for membership and decide whether to accept or reject the application. The Council may refuse any applications or propose a different membership category to the applicant or require an applicant to provide further information in support of an application before making a decision.
- (c) The Council may reject an application even if the applicant is eligible under rule 2.2 and has applied in accordance with rule 2.3(a).
- (d) The Council will notify an applicant of the Council's decision as soon as practicable after making the decision. If the Council rejects the application it may in its sole discretion give reasons for doing so.
- (e) An applicant will become a Member when:
 - (1) the Council accepts the application; and
 - (2) the applicant has paid the application fee payable to the Association, as stated in the Council's notice of decision.

2.4 APPLICATION FEE

- (a) The application fee payable by an applicant for membership to become a Member may be fixed by the Council from time to time.
- (b) In fixing the application fee the Council may differentiate between:
 - (1) the categories of membership referred to in rule 2.2; and
 - (2) classes of individuals, firms or corporations within each category.
- (c) The Council may in its absolute discretion waive the application fee of an applicant for membership of the Association.

2.5 NATIONAL MEMBERS

- (a) If at any time the National Body accepts membership applications from persons in the industry to the National Body (**National Members**) and a membership application is approved by the National Body, that National Member will automatically become a Member of the Association, without the need to apply separately in accordance with rule 2.3.
- (b) Upon a person applying to become a National Member, the Council will determine the category of Membership in which the National Member shall be categorised as for the purpose of determining the National Member's rights, including voting rights, and the membership fee payable by the National Member as a Member of the Association.

2.6 MEMBERSHIP RIGHTS

Subject to rule 2.11, each Member is entitled to:

- (a) receive copies of all periodicals, circulars and other material produced by or on behalf of the Association, except where otherwise determined by the Council;
- (b) attend all meetings of Members;
- (c) exercise all other rights of Membership set out in this Constitution;
- (d) request and receive a copy of this Constitution from the Association in accordance with section 35(2) of the Act;
- (e) exercise voting rights as follows:
 - (1) in respect of Council elections:
 - (A) all Developer Members, Builder Members, Associate Members, Life Members and Not for Profit Institutions are entitled to 1 vote per Member; and
 - (B) no other Members are entitled to vote.
 - (2) at all meetings of Members, other than in respect of Council elections:
 - (A) Developer Members are entitled to 2 votes per Member;
 - (B) Builder Members, Associate Members, Life Members and Not for Profit Institutions are entitled to 1 vote per Member; and
 - (C) no other Members are entitled to vote; and
- (f) inspect the records and documents of the Association in accordance with rule 7.4.

2.7 RIGHTS NOT TRANSFERABLE

The rights of a Member are not transferable and end when membership ceases in accordance with rule 2.12. A Member's rights may also be suspended in accordance with rule 2.13 or by reason of non-payment of the membership fees in accordance with rule 2.11.

2.8 MEMBER'S REPRESENTATIVE

- (a) Where a Member is not a natural person, the Member is to appoint a natural person as the Member's Representative to exercise the Member's rights and obligations under this Constitution.
- (b) If a Member proposes to change its Member's Representative, the Member is to inform the Chief Executive Officer in writing of the name and contact details of the new Member's Representative at least 10 days before appointing the new Member's Representative.

2.9 PROXIES OF MEMBERS

A Member (appointing Member) may appoint in writing another Member, who is a natural person, to be the proxy of the appointing Member and to attend, and vote on behalf of the appointing Member at any general meeting.

2.10 MEMBERSHIP FEE

- (a) Each Member must pay an annual membership fee.
- (b) The amount of the annual membership fee and the date by which such annual membership fee is payable is to be determined by the Council every April of the calendar year.
- (c) In determining the membership fees the Council may differentiate between:
 - (1) the categories of membership referred to in rule 2.2; and
 - (2) classes of individuals, firms, corporations or groups of companies within each category, based on such criteria or combination of criteria as the Council in its absolute discretion considers appropriate, including but not limited to:
 - (A) annual turnover;
 - (B) number of development products;
 - (C) number of employees; or
 - (D) whether the Member operates primarily within or outside the Perth Metropolitan Region.
- (d) The initial membership fee payable by a Member is to be based on a proportion of the annual membership fee calculated on a monthly basis. The date of acceptance of a membership application will be deemed as the month in which the Member joined and together with the remaining months of the subscription year to be paid in full or by an approved payment instalment plan.

2.11 NON-FINANCIAL MEMBERS

- (a) A Member who does not pay any part of the Member's annual membership fee which is due and payable within 90 days is a Non-Financial Member.
- (b) A Non-Financial Member is not entitled to receive notices of meetings of Members, vote at meetings of Members or participate on Council or any Committees (unless doing so in a Council appointed skills gap role).

- (c) Upon payment of membership fees owing, a Non-Financial Member has the membership rights referred to in rule 2.6 for that applicable membership category.

2.12 CESSATION OF MEMBERSHIP

A Member ceases to be a Member:

- (a) if the Member is an individual and the Member dies or becomes bankrupt or enters into any composition with or assignment for the benefit of the Member's creditors or becomes a person whose estate is liable to be dealt with in any way under any law relating to mental health;
- (b) if the Member is a corporation and an order is made or resolution is passed for its winding up or the corporation is deregistered;
- (c) if the Member is a partnership and the partnership is wound up;
- (d) where the Member ceases to comply with the requirements for admission to Membership of that category of Membership in respect of which the Member was admitted;
- (e) where the Member does not pay, within 120 days, any part of the Member's annual Membership fee which is due and payable;
- (f) where the Member resigns by giving written notice thereof to the Chief Executive Officer; or
- (g) where the Member is expelled from Membership.

2.13 DISCIPLINARY ACTION

- (a) The Council may by resolution carry out the following disciplinary action:
 - (1) expel a Member from UDIA (WA); or
 - (2) suspend a Member's rights of membership of UDIA (WA) for a specified period; or
 - (3) admonish a Member,if that Member or the Member's Representative has:
 - (4) refused or neglected to comply with this constitution; or
 - (5) refused or neglected to comply with the Code of Conduct adopted by UDIA (WA) from time to time; or
 - (6) been guilty of conduct which has injured or is reasonably likely injure the interests of UDIA (WA).
- (b) Prior to any disciplinary action UDIA (WA) must serve on the Member in question a written notice:
 - (1) setting out details of the conduct complained of;
 - (2) stating the date, place and time of the meeting of the Council at which it is proposed to consider and, if thought fit, pass the resolution to expel, suspend or admonish the Member;

- (3) informing the Member that the Member may do one or both of the following:
 - (A) have the Member's Representative or another individual representing the Member attend that meeting of the Council to give an explanation of the conduct of the Member or the Member's Representative; or
 - (B) give to the Council before the date of the meeting of the Council a written explanation of the conduct of the Member or the Member's Representative.
- (c) At the meeting of the Council referred to in rule 2.13(b) the Council will:
 - (1) give the Member's Representative or other individual representing the Member an opportunity to be heard; and
 - (2) give due consideration to any written submission from the Member,

and, if after doing so, the Council is of the opinion that the conduct of the Member or the Member's Representative:

 - (3) has not been in compliance with this Constitution;
 - (4) has not been in compliance with the Code of Conduct; or
 - (5) does or is likely to injure the interests of the Association,

the Council may by resolution expel, suspend or admonish that Member and, if that resolution is passed:

 - (6) it takes effect immediately; and
 - (7) the Council may publish notice of such expulsion, suspension or admonishment in such manner as the Council considers appropriate.

2.14 PAYMENT OF FEES AFTER CESSATION OF MEMBERSHIP

- (a) Any Member who ceases to be a Member remains liable to the Association to pay all unpaid membership fees owing to the Association and is not entitled to any refund of any membership fees in respect of any unexpired portion of membership unless the Council determines otherwise.
- (b) The amount owed may be recovered by the Association in a court of competent jurisdiction as a debt due to the Association.

2.15 REGISTER DETAILS

- (a) The Chief Executive Officer must keep and maintain the Register of Members in accordance with section 53 of the Act.
- (b) The Register must be kept and maintained at the premises of the Association.
- (c) The Chief Executive Officer must cause the name of a person who ceases to be a Member under rule 2.12 to be deleted from the Register.
- (d) For at least one year after a person ceases to be a Member in accordance with rule 2.12, the Chief Executive Officer must keep a record, of:

- (1) the date on which the person ceased to be a Member; and
- (2) the reason why the person ceased to be a Member.

2.16 CHANGE OF DETAILS

Every Member must give written notice to the Chief Executive Officer of any change in the information entered in the Register in respect of the Member.

3. COUNCIL

3.1 MANAGEMENT BY COUNCIL

- (a) The affairs of the Association are to be managed by a Council which may exercise all the powers of the Association as are not otherwise required to be exercised by the Association in a meeting of Members.
- (b) The Council must do all such things and all such action that the Council considers to be in the best interests of the Association.

3.2 COUNCILLORS

- (a) The Council consists of:
 - (1) the President;
 - (2) two Vice-Presidents, one of whom is to be a Developer Member;
 - (3) the Treasurer; and
 - (4) 8 other Councillors.
- (b) At least 6 Councillors must be Developer Members or Member's Representatives of Developer Members. No more than two Councillors may be Life Members.
- (c) All Councillors are to be elected in accordance with rule 6.
- (d) In addition to the Councillors referred to in rule 3.2(a), the immediate past President of the Association is an ex-officio member of the Council for 1 year following the completion of his or her term in office as President. The immediate past President is entitled to vote at Council meetings and participate as an ex-officio member of the Executive.
- (e) The Council is to consist of Members elected for their own personal suitability for the position. Each Councillor must be a Member, a Member's Representative or an employee of a Member.
- (f) The position of Councillor is to be an honorary position. However, nothing in this rule 3.2(g) operates to restrict or prohibit any Councillor, who has performed any service for or in respect of the Association, from receiving such remuneration as the Council thinks fit in the circumstances, subject to rule 3.2(h).
- (g) Every Councillor is entitled to be indemnified out of the funds of the Association for any out-of-pocket expenses for travel and accommodation properly incurred by the Councillor in or about the discharging of the Councillor's duties except such as are incurred by their wilful act, negligence or default. Any other payment to any Councillor out of the funds of the Association must be authorised by resolution at a General Meeting of the Members of the Association.

- (h) No Councillor will be liable for any other Councillor, or for joining in any receipt or other act for the sake of conformity, or for any loss or expense happening to the Association, unless the same happened through their own wilful act, neglect or default.
- (i) The Council may appoint up to two additional Councillors from either Member or Non-Member organisations based on addressing identified gaps in skills, background, experience and diversity within the elected Council for a specified period as determined by Council. Councillors appointed to skills gap roles are entitled to vote at Council meetings.
- (j) No Councillor is permitted to be a member of the governing body of another property sector related industry/advocacy body, without the express and prior permission of the President and Chief Executive Officer.
- (k) For good governance, to support diversity of views and the avoidance of overrepresentation of any Member, only one Representative of a Member can be a Councillor at any one time.

3.3 CONVENING COUNCIL MEETINGS

- (a) The Council must conduct, control and manage all the affairs and undertakings of the Association and is to hold meetings at least six (6) times per Financial Year, on the dates and at the times and places determined by the Council.
- (b) A Council meeting may be convened by the President or any six (6) Councillors.
- (c) Notice of each Council meeting must be given to each Councillor in writing or by email at least 14 days before the time of the meeting. The notice must state the date, time and place of the meeting and must describe the general nature of the business to be conducted at the meeting.

3.4 COUNCIL MEETINGS

- (a) Each Council meeting will have a Chairperson determined in accordance with rule 5.6, who shall preside over the meeting.
- (b) The Council must act by resolution and a resolution will become binding upon the Members upon being declared passed by the Chairperson of the Council meeting.
- (c) Six Councillors present and entitled to vote will form a quorum provided five or more are elected members of the Council.
- (d) A resolution is passed if a majority of the Councillors present and entitled to vote at the meeting vote in favour of the resolution.
- (e) At all Council meetings each Councillor is entitled to one vote on any resolution arising at the meeting. If the votes are divided equally, the Chairperson of the meeting is entitled to a casting vote.
- (f) Subject to these rules, the Council is to determine its own procedure for the conduct of Council meetings. In any case of doubt, the Chairperson of the Council meeting is to give a ruling as to the procedure to be followed.
- (g) Any declaration or ruling made or given by the Chairperson of the Council meeting will be final.
- (h) The order of business at a Council meeting may be determined by the Councillors at the meeting.

3.5 USE OF TECHNOLOGY

- (a) A Councillor may attend a meeting in person or virtually at the discretion of the Chairperson, provided that all Councillors are able to communicate with each other clearly and simultaneously. .
- (b) A Councillor who participates in a Council meeting as allowed under subrule (a) is taken to be present at the meeting and, if the Councillor votes at the meeting, the Councillor is taken to have voted in person.

3.6 MINUTES OF COUNCIL MEETINGS

- (a) The Council must ensure that minutes are taken and kept of each Council meeting.
- (b) The minutes must record the following:
 - (1) the names of the Councillors present at the meeting;
 - (2) the name of any other person attending the meeting with the consent of the Councillors at that meeting;
 - (3) the details of any disclosures of material personal interests by any Councillor made at or prior to the Council meeting, in accordance with section 42 of the Act;
 - (4) the business considered at the meeting; and
 - (5) any resolution on which a vote is taken at the meeting and the result of the vote.
- (c) The minutes of a Council meeting must be entered in the Association's records within 30 days after the meeting is held.
- (d) The Chairperson must ensure that the minutes of a Council meeting are reviewed and there is a formal resolution at the next Council meeting accepting them as a true and correct record of the meeting.

3.7 CIRCULAR RESOLUTIONS

- (a) The Council may pass a resolution without a Council meeting being held (Circular Resolution) if a quorum of the Councillors entitled to vote on the resolution state they are in favour of the resolution in accordance with subrule (b). Consistent with rule 3.4(c) for Council meetings, six Councillors entitled to vote will form a quorum provided five or more are elected members of the Council.
- (b) The Chief Executive Officer or President may send a Circular Resolution to all Councillors by email and the Councillors may agree to the Circular Resolution by sending a reply email to that effect, including the text of the Circular Resolution in their reply email.
- (c) The resolution is passed when the last of such Councillors as is required to form a majority states their agreement to the resolution in their reply email.
- (d) A resolution passed in accordance with this rule must be ratified at the next Council meeting.

3.8 POWERS OF COUNCIL

The Council has the following powers and rights:

- (a) full control over all the affairs and undertakings of the Association with power to exercise on behalf of the Association all the rights and powers of the Association except such rights and powers as are by these rules specifically required to be exercised in some other manner;
- (b) to make, alter, add to or rescind by-laws consistent with these rules for the regulation of the activities of the Association;
- (c) to establish one or more subcommittees, consisting of such number of people as the Council considers appropriate;
- (d) to delegate routine matters or specific duties to any one or more of its Councillors or to the Chief Executive Officer or any other person as it sees fit; and
- (e) the interpretation of these rules or of any by-laws made thereunder or of any resolution passed by the Council must be the sole determination of the Council.

3.9 CASUAL VACANCIES IN MEMBERSHIP OF COUNCIL

- (a) A Councillor ceases to hold office and a casual vacancy occurs in the office of a Councillor if a Councillor:
 - (1) dies;
 - (2) resigns by notice in writing delivered to the President or, if the Councillor is the President, to one of the Vice-Presidents;
 - (3) is convicted of an offence under the Act;
 - (4) is permanently incapacitated by mental or physical ill-health;
 - (5) is absent from more than:
 - (A) three (3) consecutive Council meetings; or
 - (B) three (3) Council meetings in the same year of appointment, of which the Councillor has received notice without tendering an apology to the Chairperson at each of those Council meetings;
 - (6) ceases to be, or is a Member's Representative of a Member which ceases to be, a Member or a Financial Member;
 - (7) is convicted of any criminal offence which in the opinion of Council makes that person unfit to be a Councillor;
 - (8) makes an assignment for the benefit of or enters into an arrangement or composition with his or her creditors or is unable to pay his or her debts within the meaning of the *Corporations Act 2001* (Cth); or
 - (9) if the Councillor is a Member's Representative and the Member notifies the Council in writing what the Councillor is no longer the Member's Representative.

- (b) When a casual vacancy within the meaning of rule 3.9(a) occurs in the membership of the Council, the Council may appoint a Member to fill that vacancy.
- (c) Rule 3.2 applies to a Member appointed under rule 3.9(b).
- (d) A member appointed under rule 3.9(b) holds office for the balance of the term.

3.10 SUBCOMMITTEES AND SUBSIDIARY OFFICES

- (a) To help the Council in the conduct of the Association's business, the Council may, in writing, do either or both of the following:
 - (1) establish one or more subcommittees;
 - (2) create one or more subsidiary offices and appoint people to those offices.
- (b) A subcommittee may consist of the number of people, whether Councillors or not, and whether Members or Member's Representatives or not, that the Council considers appropriate.
- (c) A person may be appointed to a subsidiary office whether or not the person is a Member or Member's Representative.
- (d) Subject to any directions given by the Council:
 - (1) a subcommittee may meet and conduct business as it considers appropriate; and
 - (2) the holder of a subsidiary office may carry out the functions given to the holder as the holder considers appropriate.

4. THE EXECUTIVE AND COUNCILLORS

4.1 PRESIDENT

Subject to the directions of the Council, the President will:

- (a) be active in steering the strategic direction of the Association;
- (b) be an ex-officio member of all subcommittees of the Association;
- (c) preside over the conduct of all Council meetings, meetings of the Executive and meetings of Members;
- (d) act as the Association representative on the executive of the National Body;
- (e) represent the Association and delegate such representation as appropriate;
- (f) exercise the general supervision of the Chief Executive Officer, and the duties of the Chief Executive Officer under the constitution;
- (g) carry out or delegate the duties and powers of Council;
- (h) accept the responsibilities of the other officers of the Association while they are absent; and
- (i) ensure appropriate governance procedures are in place and are reviewed regularly.

4.2 VICE-PRESIDENTS

Subject to the directions of the Council, the Vice-Presidents will:

- (a) carry out the duties and accept the responsibilities of the President in the President's absence; and
- (b) assist the President in the fulfilment of the President's duties and the achievement of the purpose and objects of the Association.

4.3 TREASURER

The Treasurer is to:

- (a) ensure appropriate management of all monies received by the Association;
- (b) ensure that all debts are paid within appropriate timelines by the Association;
- (c) present to Council and to General Meetings such reports that are required from time to time; and
- (d) perform such other duties as are imposed on the Treasurer by this Constitution.

4.4 CHIEF EXECUTIVE OFFICER

- (a) The Council may from time to time appoint a Chief Executive Officer of the Association and may enter into contracts for the provision of the services of the Chief Executive Officer to the Association.
- (b) The appointment of a Chief Executive Officer will be at such remuneration and with such responsibilities and powers as is determined by Council.
- (c) The Chief Executive Officer must report to and be responsible to the President or as otherwise determined from time to time by the Council.
- (d) The Chief Executive Officer's duties and functions include:
 - (1) co-ordinating the correspondence of the Association;
 - (2) keeping full and correct minutes of the proceedings of the Council and of the Association;
 - (3) complying on behalf of the Association with:
 - (A) section 53 of the Act in respect of the register of Members;
 - (B) section 35 of the Act in respect of the rules of the Association; and
 - (C) section 58 of the Act in respect of the record of the office holders, and any trustees, of the Association;
 - (4) financial management of the Association including:

- (A) being responsible for the receipt of all money payable to or received by him or her on behalf of the Association and must issue receipts for all moneys received in the name of the Association;
 - (B) paying all moneys into such account or accounts of the Association as the Council may from time to time direct;
 - (C) making payments from the funds of the Association with the authority of a General Meeting or of the Council and in so doing ensure that all cheques are signed by 2 persons nominated by Council;
 - (D) complying on behalf of the Association with sections 25 and 26 of the Act in respect of accounting records of the Association;
 - (E) whenever directed to do so by the President or Treasurer, submitting to the Council a report, balance sheet or financial statement in accordance with that direction; and
 - (F) having custody of all securities, books and documents of a financial nature and accepting records of the Association;
- (5) having custody of all books, documents, records and registers of the Association;
 - (6) ensuring that advice and information is available to the Council so that informed decisions can be made;
 - (7) causing Council decisions to be implemented;
 - (8) managing the day to day operations, staff and contractors of the Association;
 - (9) liaising with the Executive and the Council on the Association's affairs and the performance of the Association's functions;
 - (10) being the principal public face of the Association; and
 - (11) performing such other duties as are imposed by these rules on the Chief Executive Officer.

4.5 COUNCILLORS

Subject to the directions of the Council all Councillors are to:

- (a) prepare for, attend and participate in Council meetings;
- (b) represent the Association and promote its policies, purpose and objects;
- (c) chair meetings of subcommittees of the Council as specified by the Council; and
- (d) carry out those duties as are directed by the Council.

4.6 EXECUTIVE

- (a) The Council may formalise the role of the Council Executive as a sub-committee of the Council.
- (b) The Council Executive assist with the Council's job only, never fragmenting the wholeness of the Council's job or conflicting with the authority delegated to the Chief Executive Officer.
- (c) The Council Executive will provide advice or consultation to the CEO and provide assurance to Council as to the rigour of the Institute's approach to matters such as:
 - (1) Governance, audit and risk;
 - (2) membership strategy and associated services and products;
 - (3) policy, research, and advocacy;
 - (4) strategic communications; and
 - (5) financial management and sustainability.
- (d) The Council may from time-to-time delegate activities and decisions to the Council Executive. Any such delegations are to be captured in the minutes of the Council meeting when the delegations were made and the outcomes or advice to Council should also be recorded at a relevant future meeting(s).

5. MEETINGS

5.1 GENERAL MEETINGS

- (a) The Council:
 - (1) may at any time convene a General Meeting;
 - (2) must convene an annual General Meeting within the time limits provided for the holding of an annual General Meeting by section 50 of the Act; and
 - (3) must, within 30 days of receiving a request in writing to do so from not less than 5 Developer Members or not less than 20 percent of the Membership, convene a special General Meeting for the purpose specified in that request.
- (b) The Members making a request referred to in rule 5.1(a)(3) must:
 - (1) state in that request the purpose for which the special General Meeting concerned is required; and
 - (2) sign that request.
- (c) If a special general meeting is convened under rule 5.1(a)(3):
 - (1) the Council must ensure that the Members or Member convening that special General Meeting are supplied free of charge with particulars of all Members; and
 - (2) the Association must pay the reasonable expenses of:

- (A) convening that special General Meeting; and
- (B) holding the special General Meeting.

5.2 NOTICE OF GENERAL MEETINGS

- (a) The Chief Executive Officer must give to all Members not less than 14 days notice of a General Meeting and of any motions to be moved at the General Meeting.
- (b) A notice given under rule 5.2(a) must specify:
 - (1) when and where the General Meeting concerned is to be held; and
 - (2) particulars of the business to be transacted at the General Meeting concerned and of the order in which that business is to be transacted.
- (c) In the case of an annual General Meeting, the order in which business is to be transacted is:
 - (1) first, the consideration of the accounts and reports of the Council;
 - (2) second, the appointment of Council members to replace outgoing Council members; and
 - (3) third, any other business requiring consideration by the Association in an annual General Meeting.
- (d) Notwithstanding rule 5.2(d), the Chief Executive Officer must give to all Members not less than 21 days notice of a General Meeting at which a special resolution is to be proposed and of any other motions to be moved at the General Meeting.
- (e) The Chief Executive Officer may give a notice under rule 5.2(a) or 5.2(d) by:
 - (1) serving it on a Member personally; or
 - (2) sending it by post to a Member at the address of the Member appearing in the register of Members kept and maintained under section 27 of the Act; or
 - (3) sending it electronically to the Member at the address of the Member representative appearing in the register of Members.
- (f) When a notice is sent by post under rule 5.2(a), sending of the notice is deemed to be properly effected if the notice is sufficiently addressed and posted to the Member concerned by ordinary prepaid mail.

5.3 QUORUM IN PROCEEDINGS AT GENERAL MEETINGS

- (a) At a General Meeting, a quorum will consist of:
 - (1) 25% of the Membership; or
 - (2) 30 Members,(whichever is the lesser) present in person or by proxy and eligible to vote.

- (b) If within 30 minutes after the time specified for the holding of a General Meeting in a notice given under rule 5.2(a) or 5.2(d):
 - (1) as a result of a request or notice referred to in rule 5.1(a)(3)) or as a result of action taken under rule 5.1(c), a quorum is not present, the General Meeting lapses; or
 - (2) otherwise than as a result of a request, notice or action referred to in rule 5.3(b)(1), the General Meeting stands adjourned to the same time on the same day in the following week and to the same venue.
- (c) If within 30 minutes of the time specified by rule 5.1(b)(2) for the resumption of an adjourned General Meeting a quorum is not present, the Members who are present in person or by proxy may nevertheless proceed with the business of that General Meeting as if a quorum were present.
- (d) The Chairperson may, with the consent of a General Meeting at which a quorum is present, and must, if so directed by such a General Meeting, adjourn that General Meeting from time to time and from place to place.
- (e) There must not be transacted at an adjourned General Meeting any business other than business left unfinished or on the agenda at the time when the General Meeting was adjourned.
- (f) When a General Meeting is adjourned for a period of 30 days or more, the Chief Executive Officer must give notice under rule 5.1 of the adjourned General Meeting as if that General Meeting were a fresh General Meeting.

5.4 PROCEEDINGS AT GENERAL MEETINGS

- (a) At a General Meeting:
 - (1) an Ordinary Resolution put to the vote must be decided by a majority of votes cast on a show of hands; and
 - (2) a Special Resolution put to the vote must be decided in accordance with section 51 of the Act.
- (b) A declaration by the Chairperson at a General Meeting that a resolution has been passed as an Ordinary Resolution is evidence of that fact unless, during the General Meeting at which the applicable resolution is submitted, a poll is demanded in accordance with rule 5.5(a).

5.5 POLL MAY BE DEMANDED

- (a) At a General Meeting, a poll may be demanded by the Chairperson at the General Meeting or by 5 or more Members present in person or by proxy and, if so demanded, must be taken in such manner as the Chairperson directs.
- (b) If a poll is demanded and taken under rule 5.5(a) in respect of an Ordinary Resolution, a declaration by the Chairperson of the result of the poll is evidence of the matter so declared.
- (c) A poll demanded under rule 5.5(a) on the appointment of a person to preside over a General Meeting or on the question of an adjournment must be taken forthwith on that demand being made.

5.6 CHAIRPERSON OF MEETINGS

- (a) Subject to this rule 5.6, the President must preside at all General Meetings and Council meetings.
- (b) In the event of the absence of the President from a General Meeting, the Vice President nominated by the President is to preside at that General Meeting.
- (c) In the event of the absence of the President and both Vice Presidents from a General Meeting, a Councillor elected by the other Councillors present at the General Meeting is to preside at that General Meeting.
- (d) In the event of the absence of the President from a Council meeting, the Vice President nominated by the President is to preside at that Council meeting.
- (e) In the event of the absence of the President and both Vice-Presidents from a Council meeting, a Councillor elected by the other Councillors present at the Council meeting is to preside at that Council meeting.

5.7 MINUTES OF MEETINGS

- (a) The Chief Executive Officer must cause proper minutes of all proceedings of all General Meetings and Council meetings to be taken and then to be entered within 30 days after the holding of each General Meeting or Council meeting, as applicable, into the Association's records for that purpose.
- (b) The minutes are to be checked and if appropriate, a resolution must be passed at the next succeeding General Meeting or Council meeting, as applicable, accepting them as a true and correct record of the meeting.
- (c) Minutes entered and accepted as correct are to, unless the contrary is proven, be evidence that:
 - (1) the General Meeting or Council meeting to which they relate was duly convened and held;
 - (2) all proceedings recorded as having taken place at that meeting did in fact take place; and
 - (3) all appointments purporting to have been made at the meeting have been validly made.

6. ELECTIONS

6.1 GENERAL ELECTION

- (a) A general election of the Council will be held in every year not more than 30 days before the annual General Meeting.
- (b) From 2025 onwards, a President will be elected for a period of 3 years at the general election.
- (c) Councillors will be elected for a period of 3 years at the general election, with terms to be staggered so that, as far as practicable, no more than 4 positions are declared vacant in any one year:

- (1) To establish this staggered cycle, in 2025, 4 Councillors will be elected for a period of 2 years, with the remainder elected for 3 years.
 - (2) Where necessary to maintain the staggered cycle, Council may use or extend the term of casual vacancy appointments in accordance with rule 3.9.
- (d) The positions of Vice Presidents and Treasurer will be elected by the Council in accordance with rule 6.13.
- (e) A Councillor may serve for a maximum of 3 consecutive terms of 3 years each, subject to the normal election process, with the following applying:
 - (1) A Councillor who has served the maximum consecutive term is not eligible for re-election until at least 1 full year has passed since the end of their last term.
 - (2) Any part-term served to fill a casual vacancy of 12 months or less will not count towards the maximum term limit.
 - (3) For the purposes of calculating the maximum term under 6.1(e), service of the Councillor prior to the 2025 general election will not be counted, and existing Councillors as at that date are eligible to serve up to 3 consecutive terms of 3 years from that date.

6.2 RETURNING OFFICER

- (a) The returning officer for the general election referred to in rule 6.1 will be the Chief Executive Officer of the Association. If the Chief Executive Officer is not available, the Council will appoint an alternative returning officer at least 14 days before the date on which any election of Councillors is to be held.
- (b) The returning officer will conduct the poll within 3 days of the closing of nominations. The returning officer will appoint the persons (including a deputy returning officer) necessary for the conduct of the poll.
- (c) In the absence of the returning officer, the deputy returning officer has the same powers.

6.3 ELIGIBILITY FOR ELECTION

- (a) Only a Member, or a Member's Representative of a Member, in the following categories is eligible to be elected as a Councillor:
 - (1) a Developer Member;
 - (2) a Builder Member;
 - (3) an Associate Member;
 - (4) a Life Member; and
 - (5) Educational/NFP Member; and
 - (6) Indigenous Corporation Member.
- (b) A Member, Member's Representative or an employee of a Member is only eligible to stand for and be elected a Councillor of the Association if:

- (1) he or she has been nominated in writing signed by or on behalf of at least 2 Members;
- (2) that written nomination has been delivered to the Association at least 35 days before the date of the election; and
- (3) that written nomination is accompanied by a consent to be so nominated signed by the nominee.

6.4 NOTICE OF NOMINATION

Not less than 60 days before the date on which a general election is to be held, the Chief Executive Officer must send to each Member a notice stating:

- (a) the date of the next general election;
- (b) that nominations for the election of Councillors must be lodged with the Chief Executive Officer not later than a specified date (being at least 35 days before the date of the election); and
- (c) that nominations must be in writing signed by at least two Members and accompanied by a written consent to nomination signed by the nominee.

6.5 DEEMED ELECTION

If the number of nominees standing for election does not exceed the number of Councillors to be elected at a general election, the returning officer is to, following the date of election, declare the nominees standing for election to be elected and they are deemed to then be elected and will take office at the time specified in this Constitution.

6.6 BALLOT

- (a) If the number of nominees standing for election exceeds the number of Councillors to be elected at a general election then, at least 14 days before the date on which the election is to be held, the returning officer referred to in rule 6.2 must post a ballot paper to each Member as notified to the returning officer by the Chief Executive Officer.
- (b) The ballot paper is to be in such form as the Council may direct.

6.7 METHOD OF VOTING AND COUNTING VOTES

Votes must be counted and the result of an election ascertained as follows:

- (a) The number of votes given for each candidate is to be ascertained.
- (b) If the election is to fill the office of President, the candidate who receives the greater or greatest number of votes is elected.
- (c) If the election is to fill offices of Councillors, the candidates selected are:
 - (1) the candidate who receives the greatest number of votes;
 - (2) the candidate who receives the next highest number of votes; and
 - (3) the candidate who receives the next highest number of votes, and so on up to the number of offices to be filled.

- (d) If two or more candidates receive the same number of votes so that rules 6.7(b) or 6.7(c) cannot be applied, the returning officer is to draw lots in the presence of any scrutineers who may be present to determine which candidate is elected.

6.8 ORDER ON BALLOT PAPER

The order in which candidates appear on the ballot paper is to be determined by ballot conducted by the returning officer.

6.9 CLOSING OF BALLOT

The ballot is to close on the date of the general election specified in the notice sent to Members. The returning officer, following the close of the ballot, is to count and record in writing the number of votes for each candidate.

6.10 DECLARATION OF RESULT

Upon completion of the count the Returning Officer will complete a written declaration of the result of the ballot showing details of the voting. The declaration must be signed by the Returning Officer and forwarded to the Chief Executive Officer who will then notify all nominees of the result of the ballot within 10 days. Those persons elected will take office at the time specified in this Constitution.

6.11 RETENTION OF BALLOT PAPERS

For at least 12 months after the declaration of the ballot, the returning officer must retain in safe keeping all ballot papers received and permit inspection of them by any person upon the written order of the President and the Chief Executive Officer. Those ballot papers may be destroyed by the returning officer upon the expiration of that 12 month period unless the returning officer is otherwise ordered by the Council.

6.12 CONCLUSIVENESS OF BALLOT

The decision of the returning officer as to the admission or rejection of any vote is final and conclusive.

6.13 ELECTION OF VICE PRESIDENTS AND TREASURER

- (a) The positions for the Vice Presidents and Treasurer of the Association are to be elected at the first Council meeting held following the annual General Meeting in accordance with rules 6.7(b), 6.7(c), 6.13(d) and 6.13(e).
- (b) The Vice Presidents and the Treasurer are to be elected from the existing Councillors and any Councillor is entitled to nominate themselves for the position of Vice President or Treasurer except that at least 1 Vice President must be a Developer Member.
- (c) Where more than 2 nominations are received for the position of Vice President in accordance with rule 6.13(b) or more than one nomination is received for the position of Treasurer in accordance with rule 6.13(b), the Councillors will vote at that meeting and, in the case of an equality of votes for 2 or more candidates, the President is to have the casting vote.
- (d) Where practicable, the election of the Council Executive members should be managed to support continuity of governance and leadership. To this end, the Council may adopt a rotation schedule for the appointment of Executive positions to avoid all roles becoming vacant in the same election cycle. This schedule may include staggering terms of Executive appointments so that not all are elected or conclude their term in the same year.

- (e) The Council retains discretion to determine the timing of Executive role term commencements in a manner that best maintains organisational stability and retention of corporate knowledge, subject to the term limits and election processes outlined in this Constitution.

7. FINANCE & ADMINISTRATION

7.1 CONSTITUTION

- (a) The Association may alter or rescind these rules, or make rules additional to these rules, in accordance with the Act.
- (b) These rules bind every Member and the Association to the same extent as if every Member and the Association had signed and sealed these rules and agreed to be bound by all their provisions.

7.2 EXPENDITURE

- (a) The Council and, where so authorised by the Council, individual members of the Council, may authorise all expenditure and direct the method of dealing with the moneys received or held for and on behalf of the Association.
- (b) All cheques drawn must be signed by any 2 of the following:
 - (1) the President;
 - (2) a Vice President;
 - (3) the Treasurer;
 - (4) the Chief Executive Officer; or
 - (5) any other person appointed by the Council.

7.3 ACCOUNTS AND AUDIT

- (a) The Association is to cause books of account to be kept of all sums of money received and expended by the Association and the matters in respect of which receipt and expenditure takes place and of all sales and purchases and of the assets and liabilities of the Association. The books will be such as are necessary to give a true and fair view of the state of the Association's affairs and to explain transactions.
- (b) The books will at all times be open to inspection by any Councillor with the approval of the Council.
- (c) In accordance with Part 5, Division 1, Item 63(1) of the Act, financial reports for tier 3 associations must consist of:
 - (1) the financial statements for the year; and
 - (2) the notes to the financial statements; and
 - (3) the management committee's declaration about the statements and notes.

- (d) Under Part 5, Division 1, Item 64 (3) of the Act, a tier 3 association is defined as an incorporated association in respect of a financial year if for the year it has revenue of or exceeding:
 - (1) an amount prescribed for the purposes of subsection 64. of the Act; or
 - (2) if no amount is prescribed, \$1,000,000.
- (e) As defined under Part 5, Division 1, Item 64 (4) of the Act, revenue is to be calculated for the purposes of this section in accordance with the accounting standards in force at the relevant time (even if the standards do not otherwise apply to the financial year of the incorporated association concerned).
- (f) At the first Council meeting after each annual General Meeting, the Council must appoint a suitably qualified auditor.
- (g) The auditor appointed pursuant to rule 7.3(c) is to be appointed to hold that position until the first Council meeting after the annual General Meeting the following year.

7.4 INSPECTION OF BOOKS, RECORDS AND DOCUMENTS

- (a) The Council may determine the times and the manner in which the accounts and books of the Association are open to inspection by Members who are not Councillors.
- (b) A Member who wishes to inspect:
 - (1) the Register of Members under section 54 of the Act; or
 - (2) the record of the office holders under section 58(3) of the Act; or
 - (3) any other document of the Association,
 must contact the Chief Executive Officer to make the necessary arrangements for the inspection. The inspection will be free of charge.
- (c) The right of a Member to inspect a document that records the minutes of a Council meeting is subject to any decision the Council has made regarding the availability for inspection by Members in respect of minutes of Council meetings generally or the minutes of a specific Council meeting.

7.5 WINDING UP

- (a) The Association is to be dissolved in the event of:
 - (1) the Membership being less than 8 persons; or
 - (2) the Association at any time having less than 6 Members with full voting rights; or
 - (3) upon the vote of a 75% majority of Members present at a special General Meeting convened to consider the winding up of the Association.
- (b) On the cancellation of the incorporation or the winding up of the Association, all assets and funds of the Association on hand must, after the payment of all expenses and liabilities, be

handed over to an incorporated association or for charitable purposes in accordance with section 24 of the Act.

8. DISPUTE RESOLUTION

8.1 Terms used

In rules 8 and 9:

grievance procedure means the procedures set out in rules 8 and 9;

party to a dispute includes a person:

- (a) who is a party to the dispute; and
- (b) who ceases to be a Member within 6 months before the dispute has come to the attention of each party to the dispute.

8.2 Application of Division

The grievance procedure applies to disputes:

- (a) between Members in their capacity as Members; or
- (b) between one or more Members in their capacity as Members and the Association,

directly relating to the activities of the Association and any matters governed by this Constitution.

8.3 Dispute notice

If a dispute arises to which the grievance procedure applies, either party may give written notice thereof to the other party, providing details of the dispute and setting out that the party wishes to resolve the dispute in accordance with the grievance procedure set out in this Constitution.

8.4 Parties to attempt to resolve dispute

- (a) Within 14 days of a dispute notice being given under rule 8.3, the parties to the dispute must meet to negotiate in good faith and attempt to resolve the dispute.
- (b) The parties to the dispute must be represented at the meeting referred to in rule 8.4(a):
 - (1) if the party is a Member other than a natural person, by a senior executive or other representative authorised to settle the dispute on behalf of the Member; and
 - (2) if the party is the Association, by the President or CEO of the Association or such other person to whom the Council has delegated the authority to settle disputes.

8.5 How grievance procedure is started

- (a) If the parties to a dispute are unable to resolve the dispute between themselves within the time required by rule 8.4, any party to the dispute may start the grievance procedure by giving written notice to the President of:
 - (1) the parties to the dispute; and

- (2) the matters that are the subject of the dispute.
- (b) Within 28 days after the President is given the notice, a Council meeting must be convened to consider and determine the dispute.
- (c) The President must give each party to the dispute written notice of the Council meeting at which the dispute is to be considered and determined at least 7 days before the meeting is held.
- (d) The notice given to each party to the dispute must state:
 - (1) when and where the Council meeting is to be held; and
 - (2) that the party, or the party's representative, may attend the meeting and will be given a reasonable opportunity to make written or oral (or both written and oral) submissions to the Council about the dispute.
- (e) If the dispute is between one or more Members and the Association and any party to the dispute gives written notice to the President stating that the party:
 - (1) does not agree to the dispute being determined by the Council; and
 - (2) requests the appointment of a mediator under rule 9.2,
 the Council must not determine the dispute.

8.6 Determination of dispute by Council

- (a) At the Council meeting at which a dispute is to be considered and determined, the Council must:
 - (1) give each party to the dispute, or the party's representative, a reasonable opportunity to make written or oral (or both written and oral) submissions to the Council about the dispute;
 - (2) give due consideration to any submissions so made; and
 - (3) determine the dispute.
- (b) The Council must give each party to the dispute written notice of the Council's determination, and the reasons for the determination, within 7 days after the Council meeting at which the determination is made.
- (c) A party to the dispute may, within 14 days after receiving notice of the Council's determination under subrule (a)(3), give written notice to the President requesting the appointment of a mediator under rule 9.2.
- (d) If notice is given under subrule (c), each party to the dispute is a party to the mediation.

9. MEDIATION

9.1 Application of Division

- (a) This rule 9 applies if written notice has been given to the President requesting the appointment of a mediator by a party to a dispute under rule 8.5(e)(2) or 8.6(c).

- (b) If this rule 9 applies, a mediator must be chosen or appointed under rule 9.2.

9.2 Appointment of mediator

- (a) The mediator must be a person chosen by agreement between the parties to the dispute.
- (b) If there is no agreement for the purposes of subrule (a) within 14 days of the notice given under rule 9.1(a), then:
 - (1) if the Association is not a party to the dispute, either party may request the Council to appoint a mediator; and
 - (2) if the Association is a party to the dispute, either party may request the President (or the person deputising for the President) of the Resolution Institute (WA Chapter) to nominate a mediator.
- (c) The person appointed as mediator by the Council pursuant to rule 9.2(b)(1) may be a Member or former Member of the Association who has, in the reasonable opinion of the Association, the necessary skills and experience to conduct the mediation, but that person must not —
 - (1) have a personal interest in the matter that is the subject of the mediation; or
 - (2) be biased in favour of or against any party to the mediation.

9.3 Mediation process

- (a) The parties to the mediation must attempt in good faith to settle the matter that is the subject of the mediation.
- (b) Each party to the mediation must give the mediator a written statement of the issues that need to be considered at the mediation at least 5 days before the mediation takes place.
- (c) In conducting the mediation, the mediator must:
 - (1) give each party to the mediation every opportunity to be heard; and
 - (2) allow each party to the mediation to give due consideration to any written statement given by another party; and
 - (3) ensure that natural justice is given to the parties to the mediation throughout the mediation process.
- (d) The mediator cannot determine the matter that is the subject of the mediation.
- (e) The mediation must be confidential, and any information given at the mediation cannot be used in any other proceedings that take place in relation to the matter that is the subject of the mediation.
- (f) The costs of the mediation are to be paid by the party or parties to the mediation that gave the notice under rule 9.1(a) requesting the appointment of the mediator.

Note for this rule: Section 182(1) of the Act provides that an application may be made to the State Administrative Tribunal to have a dispute determined if the dispute has not been resolved under the procedure provided for in the incorporated association's rules.

9.4 If mediation results in decision to suspend or expel being revoked

If mediation takes place because a Member whose membership is suspended or who is expelled from the Association disputes such decision and as the result of the mediation, the decision to suspend the Member's membership or expel the Member is revoked, that revocation does not affect the validity of any decision made at a Council meeting or general meeting during the period of suspension or expulsion.